



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

(Petitioner)
(Petitioner's address)

DECISION

MDV-38/47480

PRELIMINARY RECITALS

Pursuant to a petition filed January 9, 2001, under Wis. Stat. §49.45(5) and Wis. Adm. Code § HA 3.03(1), to review a decision by the Marinette County Dept. of Human Services in regard to Medical Assistance (MA), a hearing was held on January 26, 2001, at Marinette, Wisconsin.

The issue for determination is whether the county agency acted correctly in determining that petitioner was ineligible for institutional MA for October 2000 based on a divestment.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

(Petitioner)
(Petitioner's address)

Represented by:

(representative)
(representative address)

Wisconsin Department of Health and Family Services
Division of Health Care Financing
1 West Wilson Street, Room 250
P.O. Box 309
Madison, WI 53707-0309

By: Ann Schuhart, ESS
Marinette County Dept Of Human Services
Wisconsin Job Center Suite B
1605 University Drive
Marinette, WI 54143

EXAMINER:

Peter D. Kafkas
Administrative Law Judge
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (SSN xxx-xx-xxxx, CARES #xxxxxxxxxx) is a resident of Marinette County.
2. Petitioner's son, who was also petitioner's power of attorney, transferred \$4,489.84 to himself from petitioner's account on October 20, 2000. Exhibit 1, page 3.

3. The son applied for institutional MA for petitioner on November 15, 2000. The county agency denied benefits for the month of November 2000 on the basis that a divestment occurred when the son transferred \$4,489.84 to himself on October 20, 2000. *Id.*

DISCUSSION

“Divestment,” for MA purposes, is the transfer of income, non-exempt assets, and homestead property which belong to an institutionalized person or his/her spouse or both, for less than the fair market value of the income or asset. MA Handbook, App. 14.2.0. The “divested amount” is the net market value minus the value received. *Id.* at 14.2.7. For a divestment to occur, the transfer must occur on or after the individual’s “look-back date.” Wis. Stat. § 49.453(2)(a). The “look-back date” is defined as 36 months before, or with respect to trusts, 60 months before, the first date the individual is both institutionalized and an MA applicant. *Id.* at § 49.453(1)(f).

If there was a divestment, and no exceptions apply, the institutionalized person must be determined ineligible for a period of time. Medical Assistance Handbook, App. 14.5.0. The individual is ineligible for MA paid institutional services for a number of months determined by totaling the value of all assets transferred during the look-back period and dividing that amount by the average monthly cost to a private patient of nursing facility services at the time of the MA application. Wis. Stat. § 49.453(3)(b). The ineligibility period begins with the month of the first divesting transfer of assets. *Id.* at § 49.453(3)(a).

Regarding a denial of an applicable for benefits, the petitioner has the burden of establishing eligibility.

Petitioner’s son acknowledged that he transferred \$4,489.84 to himself from his mothers account on October 20, 2000. He argued that the transfer was repayment of a loan that he gave his mother. But petitioner’s son had no documentation to support that a loan occurred. There was no promissory note or marking on any check or transfer document showing that a loan occurred.

Petitioner’s son did present a document entitled “Finances,” which was prepared a month after the final transfer. Exhibit 3. Nowhere in this document are summations made totaling \$4,489.84. *Id.* Nor was any other accounting provided showing additions (loans) or subtractions (repayments) with a \$4,489.84 balance.

The county representative was also credible in her testimony that she had strongly advised petitioner’s son that detailed accounting would have to be kept for his mother’s funds while he was acting as power of attorney; i.e., to avoid a divestment issue for MA benefits. She also was persuasive in her arguments that, with the frequent transfers back and forth between petitioner’s and her son’s accounts, with no running total of any “debt” of the mother, it appeared possible that any funds petitioner’s son transferred to petitioner’s account were repayments of funds petitioner’s son had previously withdrawn.

Even if any funds were transferred to the mother, without a previous payment by the mother, there is no documentary evidence that it would have been anything other than a gift to the mother. Again, no evidence of a lending transaction has been presented.

It was undisputed that the \$4,489.84 would result in a one-month ineligibility period when divided by the average monthly institutional care cost of \$3,929. Petitioner’s son only disputed the one-month ineligibility period as discussed herein; i.e., no other issues have been presented.

CONCLUSIONS OF LAW

The county agency acted correctly in denying petitioner institutional MA benefits for the month of November 2000 since a divestment had occurred in October 2000.

NOW, THEREFORE, it is

ORDERED

That the petition for review herein be and the same is hereby dismissed.

REQUEST FOR A NEW HEARING

This is a final fair hearing decision. If you think this decision is based on a serious mistake in the facts or the law, you may request a new hearing. You may also ask for a new hearing if you have found new evidence which would change the decision. To ask for a new hearing, send a written request to the Division of Hearings and Appeals, P.O. Box 7875, Madison, WI 53707-7875.

Send a copy of your request to the other people named in this decision as "PARTIES IN INTEREST."

Your request must explain what mistake the examiner made and why it is important or you must describe your new evidence and tell why you did not have it at your first hearing. If you do not explain these things, your request will have to be denied.

Your request for a new hearing must be received no later than twenty (20) days after the date of this decision. Late requests cannot be granted. The process for asking for a new hearing is in sec. 227.49 of the state statutes. A copy of the statutes can found at your local library or courthouse.

APPEAL TO COURT

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed no more than thirty (30) days after the date of this hearing decision (or 30 days after a denial of rehearing, if you ask for one).

Appeals for benefits concerning Medical Assistance (MA) must be served on Department of Health and Family Services, P.O. Box 7850, Madison, WI, 53707-7850, as respondent.

The appeal must also be served on the other "PARTIES IN INTEREST" named in this decision. The process for Court appeals is in sec. 227.53 of the statutes.

Given under my hand at the City of
Madison, Wisconsin, this _____ day
of _____, 2001.

Peter D. Kafkas
Administrative Law Judge
Division of Hearings and Appeals
412/PDK

cc: MARINETTE COUNTY DEPT OF HUMAN SERVICES
DHFS - Susan Wood
Harry Davenport, 365 N Boyd, Winter Garden FL 34787